KING'S CONFECTIONERY SDN BHD

v.

KT SYSTEM PROTECTION SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[SUIT NO: S6-22-528-2000]
26 OCTOBER 2001

CIVIL PROCEDURE: *Injunction - Interlocutory injunction - Application to restrain sale of property - Whether to be granted*

CIVIL PROCEDURE: *Striking out - Rules of the High Court, O. 18 r. 19 - Whether action frivolous, vexatious and an abuse of court*

The defendant was the beneficial owner of a shop lot rented by the plaintiff. Subsequently, the defendant sold the said shop lot to a third party and informed the plaintiff to vacate the premises. The plaintiff refused to do so and applied to this court for an interlocutory injunction to restrain the defendant from selling the said shop lot to any third party. In justifying the application, the plaintiff submitted that there were serious questions to be tried in that the defendant had agreed to sell the said shop lot to them and that the plaintiff was a tenant coupled with equity by virtue of having spent RM450,000 towards renovating the place.

The defendant denied agreeing to sell the property to the plaintiff and applied under O. 18 r. 19 of the Rules of the High Court 1980 to this court to strike off the plaintiff's claim.

Held:

[1] There was no evidence to prove that the plaintiff was involved in a transaction with the defendant regarding the purchase of the said property. (p 268 h)

[2] The plaintiff had not proven that the defendant had received a letter and a cheque which was purportedly a deposit of the purchase price for the shop lot in question. (p 269 b-c)

[3] In order to enable the money expended by the tenant for renovation of the premises to be regarded as a tenant coupled with equity, the tenant must be led to believe by the landlord that as a result of the expenditure, the tenant will be allowed to remain in the premises for as long as he liked or for a considerable time. (p 270 b-c)

[3a] The plaintiff was not a tenant coupled with equity. The defendant had not led the plaintiff to believe that the latter could remain in the premises for a considerable period of time. The last tenancy agreement between the parties did not provide for a renewal. (p 270 c-d)

[4] As the plaintiff had failed to establish that there was a serious question to be tried, the application for an interim injunction ought to be dismissed. (p 270 e)

[5] Even if the plaintiff could succeed in their claim, they could be adequately compensated by damages. (p 270 f)

[6] As to the balance of convenience, it was very much in favour of not granting the interim injunction as the defendant had already entered into a sale and purchase agreement with a third party. The defendant as well as the third party would suffer losses should the injunction be granted. (p 270 g)

[7] The defendant's application to strike out the plaintiff's claim was allowed with costs. The plaintiff's action was frivolous, vexatious and an abuse of the court process. The allegations forwarded by the plaintiff were without merits. (p 271 d-e)

[Plaintiff's application dismissed with costs. Defendant's application granted with costs.]

Case(s) referred to:
American Cyanamid Co v. Ethicon Ltd [1975] 1 All ER 504 ***(refd)***
Inwards v. Baku [1965] 1 All ER 446 ***(refd)***
Khew Ah Ban v. Hong Ah Mye [1971] 2 MLJ 86 ***(refd)***
Raja Zainal Abidin Raja Haji Tachik & Ors v. British-American Life & General Insurance Bhd [1993] 3 CLJ 606 ***(refd)***
Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd [1979] 1 MLJ 150 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19(1)(b), (d)

For the plaintiff - Yokinee Selvam; M/s Manjit Singh Sachdev Mohamad Radzi & Partners
For the defendant - LY Khor; M/s Christina Chia Ng & Partners

Reported by M Maheswaran

JUDGMENT

Azmel Maamor J:

There were two applications made in this case. The 1st application was made by the plaintiff for an order of interlocutory injunction (encl. 3) restraining the defendant from entering into any transactions that would cause the shop lot No. 85-G at No. 26-B1 Jalan SS6/3 Kelana Jaya, Petaling Jaya, Selangor (the said shop lot), to be sold to any third party.

The brief facts of the case are as follows. The defendant was the beneficial owner of the said shop lot. By a tenancy agreement dated 31 July 1996 the plaintiff rented the said shop lot from the defendant for a period of three years. The tenancy agreement contained a provision giving an option to the plaintiff to renew the tenancy after its expiry. However such option was not exercised by the plaintiff. As such the tenancy expired on 31 July 1999. Through various negotiations between the plaintiff and the defendant, the defendant finally agreed to allow the plaintiff to continue renting the said shop lot based on a new tenancy agreement signed by the parties on 17 April 2000. The new tenancy was for the period commencing on 31 July 1999 to 31 July 2000. In this new tenancy agreement there was no provision for further extension of tenancy. In other words this new tenancy would automatically expire on 31 July 2000.

Apart from this shop lot the defendant also owned the adjacent shop lot No. 86-G at No. 26-A1 Jalan SS6/3 Kelana Jaya, Petaling Jaya, Selangor. On 24 April 2000 the defendant entered into an agreement with one Lau Chia Nguang for the sale of the said shop lot and another adjacent shop lot to Lau Chia Nguang. The agreement provided clearly that vacant possession of the two shop lots would be handed only on 31 July 2000. On 10 May 2000 the defendant, through its solicitors M/s Rastam Singa & Co, informed the plaintiff that the defendant had sold the said shop lot to a third party and reminded the plaintiff to vacate the said shop on the date of the expiry of the tenancy agreement, ie, 31 July 2000.

However the plaintiff refused to vacate the said shop lot. Instead the plaintiff, on 21 July 2000 filed in court this action praying among other reliefs, for an order of injunction restraining the defendant from entering into any transactions that would cause the said shop lot to be transferred to any third party.

In order to succeed in an application for an order of injunction it is incumbent upon the plaintiff to show to this court the four conditions as enunciated in the case of *American Cyanamid Co v. Ethicon Ltd* [1975] 1 All ER 504 do exist. They are:

1. There is a serious question to be tried; and

2. Damages would not be an adequate compensation for the Plaintiff but would be an adequate compensation for the Defendant; and

3. The balance of convenience lies in favour of the Plaintiff's favour; and

4. There are special circumstances in favour of the Plaintiff or there are no special circumstances in favour of the Defendant.

It is incumbent upon the plaintiff must show all the four conditions and if the plaintiff fails to show any one of the four conditions then the application for injunction would not succeed.

In respect of the first condition ie, whether the plaintiff had shown any serious question to be tried, the plaintiff had relied on two allegations, namely:

1. That the defendant had agreed to sell the said shop lot to the plaintiff; and

2. That the plaintiff had expended a sum of RM450,000,000 towards renovation works of the said shop lot and as such the plaintiff was a tenant coupled with equity.

In support of the first allegation the plaintiff contended that Lincoln Hoo, a solicitor working in the plaintiff's solicitors' firm had acted on behalf of the plaintiff to negotiate the sale of the said shop lot with the defendant. It was further alleged by the plaintiff that at the request of Lincoln Hoo that a copy of the draft sale and purchase agreement was obtained from the defendant. As such an intention to sell the said shop lot to the plaintiff on the part of the defendant had existed.

The defendant strenuously denied this allegation by the plaintiff. The defendant denied totally ever having any agreement or intention to sell the said shop lot to the plaintiff. In respect of the request for a copy of the sale and purchase agreement by Lincoln Hoo the defendant explained that Lincoln Hoo told the defendant that he was acting for a Singaporean Chinese. There was no mention at all that the plaintiff was involved in the transaction. In any case the defendant further explained that the proposed transaction with the Singaporean Chinese who was represented by Lincoln Hoo was aborted. Having regard to the circumstances as mentioned above I was quite satisfied that the involvement of Lincoln Hoo in the transaction was not at all acting on behalf of the plaintiff. It is to be noted that there was no affidavit filed by Lincoln Hoo to dispute the defendant's contention.

The other issue put forward by the plaintiff in support of the first allegation was that the plaintiff had sent a letter dated 8 March 2000 to the defendant enclosing a Multi-Purpose Bank Berhad (MPBB) cheque No. 840447 in the sum of RM28,600 being 2% deposit of the purchase price of RM1.42 million of the said shop lot. The defendant denied ever receiving the alleged letter nor the cheque allegedly enclosed in the letter. The plaintiff was unable to state who in the defendant's company had received the said letter. It is also a fact that the alleged cheque had never been cashed. In the light of the circumstances as mentioned above I was unable to find as true fact that the defendant had received the letter together with the cheque. There was no acknowledgment of receipt of the letter produced in court. Furthermore the plaintiff, after having sent the alleged letter of 8 March 2000, did not take any follow up actions either by itself or through its solicitors, such things like asking for a draft of the sale and purchase agreement, etc. On the other hand the defendant, upon being informed by the plaintiff of the existence of the letter dated 8 March 2000 allegedly sent to it, immediately wrote to the plaintiff denying ever having received such letter. Such contemporaneous reactions are quite relevant and they would normally tend to corroborate the truth of the existence or otherwise of a situation. In the light of the above circumstances I decided to accept the defendant's contention that it had not received the letter dated 8 March 2000 together with the MPBB cheque no. 840447 amounting to RM28,600. I also agree with the defence counsel's submission that the letter of 8 March 2000 was purely a "self serving" document and should not be given much weight.

Based on the evidence that had been adduced in court in respect of the plaintiff's application I arrived at the conclusion that the plaintiff had failed to satisfy the test as laid down by the Federal Court case of *Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd* [1979] 1 MLJ 150 that any plaintiff seeking any interlocutory relief must show that there is at least a serious question to be tried and to "adduce sufficiently precise factual evidence" to satisfy the court that it had a real prospect of succeeding in its claim at the trial. What the plaintiff had managed to establish were bare allegations which fell far short of the test as laid down by the case of *Sivaperuman*. In the circumstances I therefore ruled that the plaintiff's first allegation must fail.

I shall now consider the plaintiff's second allegation ie, whether the plaintiff was a tenant coupled with equity. It was alleged that the plaintiff had spent a sum of RM450,000 towards renovation of the said shop lot. However, the defendant explained that the only renovation works done by the plaintiff were changing of two brick walls to glass paneling and nothing else. According to the defendant such works would not cost RM450,000. The defendant further explained that at no time did the defendant encourage the plaintiff to cause

such change on the two walls. On the other hand the plaintiff was obliged to return the wall to its original condition upon the expiry of the tenancy period. This was the condition as stipulated in the tenancy agreement.

In addition to that the second tenancy agreement had specifically omitted the provision giving option to the plaintiff to further extend the tenancy beyond 31 July 2000. Even though the plaintiff made several requests the defendant refused to include that option to extend in the second tenancy agreement.

It is a legal requirement that in order to enable the money expended by the tenant for renovation of the premises to be regarded as a tenant coupled with equity the tenant must be led to believe by the landlord that as a result of the expenditure, the tenant will be allowed to remain in the premises for as long as he liked or for a considerable period of time. (See cases of *Inwards v. Baku* [1965] 1 All ER 446; and *Khew Ah Ban v. Hong Ah Mye* [1971] 2 MLJ 86). In this case there was no evidence adduced by the plaintiff to show that the defendant had led the plaintiff to believe that the plaintiff could remain in the premises for a considerable period of time. As I have mentioned above, the second tenancy agreement was for a specific period and did not provide for any renewal. In the light of the above circumstances I came to the conclusion that the plaintiff was not a tenant coupled with equity. Therefore this second allegation must also fail.

With the plaintiff's inability to establish the two allegations I therefore concluded that the plaintiff had failed to show any serious question to be tried. Since the plaintiff had failed to show the first of the four conditions the plaintiff's application for interim injunction should be dismissed.

Even the remaining three conditions are not favourable to the plaintiff. In my view even if the plaintiff could succeed in its claim the plaintiff could be adequately compensated by award of damages. As to the balance of convenience I was of the view that it was very much in favour of not granting the interim injunction because the defendant had already entered into a sale and purchase agreement with a third party. It would cause a big loss to the defendant as well as the innocent third party if the application for interim injunction was granted.

I therefore ordered that the plaintiff's application for interim injunction be dismissed with costs.

Second Application By Defendant (Encl. 14)

The defendant in this second application was seeking for an order that the plaintiff's writ and statement of claim be struck out under O. 18 r. 19(1)(b) or (d) of the Rules of the High Court 1980 and the plaintiff's action be dismissed with costs.

In this action the plaintiff was seeking for injunction, specific performance and damages. This action was basically grounded on the following allegations:

1. That the defendant had agreed to sell the said shop lot to the plaintiff; and

2. That the plaintiff was a tenant coupled with equity.

When dealing with the 1st application for interim injunction by the plaintiff (encl. 3) I have disposed off the above two allegations in detail. And it was my conclusion that the two allegations which formed the basis of the plaintiff's action were completely without merits. And in dealing with this application by the plaintiff I was fully aware of the principle that has been laid down in the case of *Raja Zainal Abidin Raja Haji Tachik & Ors v. British-American Life & General Insurance Bhd* [1993] 3 CLJ 606 on the need to make a thorough scrutiny of the evidence adduced in this case. In my consideration of the two allegations of the plaintiff I had applied the said principle. And for the reasons as I had earlier stated in my judgment when dealing with the plaintiff's application I came to the conclusion that the two allegations of the plaintiff were completely without any merits. As such there was no possibility whatsoever for the plaintiff to be successful in its action. In the circumstances I therefore held that the plaintiff's action was frivolous, vexatious and an abuse of the court process. Consequently I allowed the defendant's application with costs.